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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

UNITED STATES OF AMERICA — **Case No. 7:94-cr-40106-4**

v. — **§ 2255 MEMORANDUM OPINION**

PATRICK EARL FRANCIS,
Petitioner.

By: Hon. Jackson L. Kiser
Senior United States District Judge

Petitioner Patrick Earl Francis, a federal inmate proceeding pro se, filed a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. After reviewing the record, I dismiss the motion as successive.

A district court may consider a second or successive § 2255 motion only upon specific certification from the Fourth Circuit Court of Appeals that the claims in the motion meet certain criteria. See 28 U.S.C. § 2255(h). Court records indicate that petitioner has previously filed a § 2255 motion regarding the same conviction and/or sentence. See, e.g., Francis v. United States, No. 7:05-cv-00789, 7:05-cv-00363, 7:04-cv-00250, 7:99-cv-00420 (W.D. Va.). Thus, petitioner's current § 2255 motion is a second or subsequent one under § 2255(h). As petitioner has not submitted any evidence of having obtained certification from the United States Court of Appeals for the Fourth Circuit to file a second or successive § 2255 motion, I must dismiss the action without prejudice. Based upon my finding that the petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner.

ENTER: This 23rd day of October, 2012.

[signature: Jackson L. Kiser]
Senior United States District Judge